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R. Borchardt



64FR56129
Oct. 15, 1999

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Robert Willis Bishop
VICE PRESIDENT &
GENERAL COUNSEL

November 29, 1999

Mr. David L. Meyer, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop: T6D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: NRC Enforcement Policy; Enforcement Action Against Nonlicensees
Under 10 CFR Part 72

Dear Mr. Meyer:

On behalf of the nuclear energy industry, the Nuclear Energy Institute¹ is pleased to provide comments on the NRC's revisions to its Enforcement Policy, published October 15, 1999 (64 Fed. Reg. 56129).

In taking enforcement action against nonlicensees for violations of Part 72, the NRC should apply to Part 72 violations the same principles that the NRC recently incorporated into the Interim Enforcement Policy² and into the General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy).³

In sum, we would expect that enforcement action for Part 72 violations would be similarly adjudged on the basis of safety significance. As is now the case in the revised Enforcement Policy, the NRC should evaluate each finding to determine the

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

² 64 Fed. Reg. 43229; August 9, 1999.

³ 64 Fed. Reg. 61142; November 9, 1999.



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violation's risk significance and, if appropriate, apply the criteria for dispositioning violations either as a Notice of Violation or a Non-Cited Violation.⁴ Because NCV's are expected to be the norm for nonsafety significant violations – and do not require a response – this approach will avoid the unnecessary expenditure of certificate applicant/holder, licensee and NRC resources on items having little or no safety significance.

Enforcement for Part 72 violations also should be based upon objective criteria that are consistently and predictably applied. We note the NRC's previous practice of taking enforcement action based on new interpretations or expanding views of compliance has been addressed through the NRC's recent amendments to the Enforcement Policy.⁵ Similarly, eliminating the use of subjective terms, such as "regulatory significance" and "aggregation," will contribute significantly to enforcement action that is readily understandable to the certificate applicant/holder, licensees and the public.

We believe that it is sound public policy to apply the precepts underlying the recent changes to the Interim Enforcement Policy and the Enforcement Policy to violations of Part 72. By so doing, the NRC can achieve its overall goal of a more risk-informed regulatory framework that more effectively meets its safety objectives.

We appreciate the opportunity to comment on the Policy revision and would be happy to discuss our views with NRC staff.

Sincerely,



Robert W. Bishop

⁴ See Revised Treatment of Severity Level IV Violations at Power Reactors, 64 Fed. Reg. 6388; February 9, 1999.

⁵ See 64 Fed. Reg. 61142.